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Examination No. _____

580 ENVIRONMENTAL LAW

Semester I, 1997

UNM School of Law
Final Examination
Three Credits

Professor Denise Fort

INSTRUCTIONS

You may take up to eight hours to complete this exam, however, it must be returned to Janet Cox on the day that you pick it up. A page limit (double spaced) for each question is indicated. You may use a computer or word processor to write your answer, although you may also write it in long hand.

A. This is an open-book examination. You may use:

1. All materials supplied in connection with the course in Environmental Law;
2. the statutes;
3. materials prepared by you, including class notes, any outlines or notes you have prepared as a study aid; and
4. the assigned casebooks.

You may not use any commercial outlines or nutshells.

B. For question 1 you may use any on-line research service (Internet, Lexis, Westlaw) that you wish and any library resources. You may not, however, discuss it with any person. I suggest beginning with this question, in case there are any problems in access. If there is a day long problem (i.e., national power outage, etc.) don't panic, but complete the remainder of the exam, prepare a written statement about your efforts to get on-line, leave a message on my voice mail, and give me a return phone number. I will give further instructions at that time.

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Question I: 25 %- 5 page limit (don't hand in printouts)

The regulation of activities on private property in the name of environmental protection has alarmed many in American political life. In particular, the members of the 105th Congress have responded to these concerns. You represent a county government, which administers a coastal zone protection program, comparable to that in the Lucas case. You have been asked to write a brief memorandum analyzing whether there is any legislation that will affect the county in its regulatory role. You are asked to identify all relevant pending legislation, but to limit your analysis to pending legislation that stands some chance of passage. Please determine whether it is likely to pass based on how far it has gone in the legislative process, evident degree of opposition, etc., but don't rely on LEXIS BLCAST. (I'm finding BLCAST to be too slow in posting legislation.)

To reiterate: 1) list of relevant bills, 2) identification of most promising bill, and 3) very brief analysis of whether it has any evident bearing on the Lucas standard for when a compensable "taking" has occurred.

Question II: 50%- 10 pages (double spaced)

In the following question, accept the facts given as true, although they do not capture the full complexity of the situation.

New Mexico's streams and lakes are impaired largely because of nonpoint source pollution. Isleta Pueblo is finding that its water quality standards are not being achieved, despite the Albuquerque POTW's compliance with its NPDES permit. Other point sources are further upstream and although they do contribute pollutants, EPA cannot model the contribution at Isleta's boundaries. Upstream activities occur on federal and private lands. Pollutants include turbidity (sedimentation), caused by grazing, agriculture, and natural causes, metals from land disturbance from the same sources, and toxics from unknown sources. If you were advising the Pueblo, what legal strategies would you suggest to the Pueblo to help bring about compliance with its stream standards. Be creative. Provide citations to the Clean Water Act, case book, and other materials provided in class.

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III. 25 %- 5 page limit. You may use the CEQ regulations for this question.

An environmental group (River Otter Woes or ROW) has grown increasingly desperate in its attempts to improve New Mexico's stream standards. The state has just finished its triennial review and submitted the standards to EPA. ROW is very unhappy with these standards because it had asked that the state designate a number of streams as "Outstanding National Resource Waters." Instead of doing so, the state made no changes in its standards. The environmentalist's latest strategy is borne of that desperation; it wants a court to order that an Environmental Impact Statement be done. ROW has come to you as their attorney for your analysis.